UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,222	02/28/2002	David B. Kramer	9-22	6946

7590   12/12/2006

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EXAMINER
TSEGAYE, SABA

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)	
Advisory Action ***Before the Filing of an Appeal Brief***	10/085,222	KRAMER ET AL.	
	Examiner	Art Unit	
	Saba Tsegaye	2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>21 January 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

   Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>21 November 2006</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

DORIS H. TO
SUPERVISORY PATENT EXAMINER
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Continuation of 11, does NOT place the application in condition for allowance because:

Applicant admitted, "Willard teaches a scheduler can be implemented in hardware",

however, Applicant argues, "Willard fails to teach or suggest that a hardware-implemented

scheduler can be a advantageously combined with a software-implemented interval computation

element external to the hardware-implemented scheduler". Examiner respectfully disagrees with

Applicant contention. Willard clearly teaches that *a scheduler may be implemented in software,*

firmware, hardware or a combination thereof. Furthermore, it is respectfully submitted that the

rejection is based on the combined teaching of the Fan (Boland) and the Willard patents. Fan

discloses a flexible and scalable architecture and method that implements **dynamic rate** control

scheduling in an ATM switch (see Fan col. 3, lines 1-8). Boland discloses a method of regulating

the transfer of ATM cells to maintain **rate precision** and provide **flexibility for dynamically**

adjusting the **rates** at which cells are transferred. Those skilled in the art will know that various

functions are performed by software and/or hardware. Therefore, to add software scheduler or a

combination of software and firmware in the system of Fan or Boland would provide a flexible

architecture.

Applicant, further, argues (Remarks, page 4) "Fan fails to teach or suggest the limitation

of claim 1 relating to a particular location in the time slot table being assigned to one or more of

the transmission elements as a function of both a current time and the transmission interval".

Examiner respectfully disagrees. Fan clearly discloses this limitation, such as; timestamps for

scheduling/rescheduling are determined by the use of the most recently computed value of the

dynamic rate R. A timestamp is calculated on the basis of the dynamic rate to

schedule/reschedule a queue. More specifically a timestamp for scheduling is given by max

(TS+1/R, CT) where CT is current time (see also column 3, lines 59-64). Furthermore, the

instant specification discloses that the transmission interval is defines that **rate** at which a

transmission element is permitted to transmit from the time slot table (see instant specification

page 9, lines 26-27).